

Property Tax Bureau
Informational Guideline Release (IGR) No. 02-206
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(With technical corrections announced in *Bulletin* 2002-07B)

TAX AGREEMENTS FOR AFFORDABLE HOUSING DEVELOPERS
AND
OPTIONS FOR TAX TITLE FORECLOSURE

Chapter 2 of the Acts of 2002
(Adding G.L. Ch. 58 §8C, Ch. 60 §§77C and 81B and amending G.L. Ch. 60 §§1, 65 and 69A)

This Informational Guideline Release (IGR) explains recent legislation that makes several changes in tax collection procedures in order to promote affordable housing construction on or municipal use of real property parcels on which there are outstanding municipal taxes and charges. Under this legislation, communities may enter into tax abatement agreements with developers of affordable housing, subject to the approval of the Department of Revenue, expedite the foreclosure of certain tax titles or accept a deed in lieu of foreclosure for certain parcels. The maximum value of parcels that qualify for the alternative land of low value foreclosure procedure has also been increased.

Topical Index Key:

Abatements and Appeals
Collection Procedures

Distribution:

Assessors
Collectors
Treasurers
Accountants/Auditors
Selectmen/Mayors
City/Town Managers/Exec. Secys.
Finance Directors
City/Town Councils
City/Town Clerks
City Solicitors/Town Counsels

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TAX AGREEMENTS FOR AFFORDABLE HOUSING DEVELOPERS
AND
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SUMMARY:

These guidelines explain several changes in tax collection procedures that are intended to promote affordable housing construction on or municipal use of real property parcels that are currently non-productive due to delinquent municipal taxes and charges. These changes are effective April 11, 2002.

First, cities and towns that accept a new local option, G.L. Ch. 58 §8C, may enter into agreements with developers of affordable housing for the payment of outstanding property taxes, including abatement of an amount that makes developing the site economically feasible. A municipality that accepts the statute must first adopt an implementation by-law or ordinance. Abatements must be approved by the Commissioner of Revenue and are limited to 75% of outstanding real estate taxes and 100% of accrued interest and collection costs. *The standards and procedures that must be followed to obtain DOR approval of affordable housing abatements will be set forth in separately issued guidelines.*

Under a second new provision, G.L. Ch. 60 §77C, cities and towns may now accept a deed from all persons with an interest in certain properties on which there are outstanding taxes and charges as an alternative to tax taking and foreclosure. Only municipal liens can exist on the properties and the municipal legislative body must vote to accept the deed. Once the accepted deed is recorded, the property is treated as a tax possession and the grantors are permanently barred from reacquiring the parcel from the municipality.

Another category of tax title properties is now eligible for early or expedited foreclosure proceedings. Under the new G.L. Ch. 60 §81B, in cases where the amount needed to redeem a parcel in tax title is greater than its fair cash value, a treasurer now has the option of recording an affidavit so certifying and immediately filing a foreclosure petition in land court. G.L. Ch. 60 §65. The treasurer must ordinarily wait at least six months after the taking of petition for foreclosure. Once a foreclosure decree is entered, any party with an interest in the parcel who seeks to vacate the decree will have only 90 days to file the petition, not the usual one year. G.L. Ch. 60 §69A.

Finally, the maximum value for parcels that qualify for use of the alternative land of low value procedure under G.L. Ch. 60 §79 has been increased from \$10,000 to \$15,000. That amount will now be automatically increased as of each January 1 by the percentage increase in the previous calendar year's Consumer Price Index.

GUIDELINES:

I. AFFORDABLE HOUSING TAX AGREEMENTS

Communities may make agreements with affordable housing developers regarding the payment of outstanding real estate taxes, accrued interest and collection costs, including abatements that are subject to the approval of the Department of Revenue (DOR).

A. Statute Acceptance

To make affordable housing tax agreements, a city or town must first accept G.L. Ch. 58 §8C. Acceptance is by majority vote of town meeting or town/city council subject to applicable charter provisions. G.L. Ch. 4 §4.

The city or town clerk should notify the Property Tax Bureau if the statute is accepted. (See attached "Notification of Acceptance").

B. Implementation By-law/Ordinance

Municipalities that accept the statute must also adopt an implementation by-law or ordinance before any agreements may be made. The by-law or ordinance must specify the method for negotiating and approving the agreements. This would include, at a minimum, the following:

- The officer(s) authorized to negotiate an agreement on behalf of the city or town. This authority may be given to a particular officer, or some combination of officers.
- The process for approving any agreement negotiated. The legislative body may retain the power to approve all or some agreements, *e.g.*, those including tax abatements over a certain dollar amount, or it may establish another approval process.
- The officer(s) authorized to sign an agreement on behalf of the city or town. This authority may or may not be given to the same officer(s) authorized to negotiate the agreement.

Municipalities may also include policies regarding the circumstances under which agreements may be made, as well as any parameters regarding the terms of the agreement.

C. Tax Agreements

An affordable housing tax agreement must meet the following minimum standards.

- It must cover a parcel that will be developed and used for affordable housing, or mixed affordable housing and commercial, purposes.
 - *Affordable housing* is defined as property that is (1) subject to a recorded affordable housing restriction of at least 45 years and (2) owned or rented to families or individuals with household income at time of initial occupancy that meets certain income standards. Household income cannot exceed 120 per cent of the area wide median income determined by the United States Department of Housing and Urban Development (HUD) as adjusted for family size. Subsequent owners and renters must also meet that income standard at initial occupancy. The property is subject to resale restrictions the municipality imposes to maintain its affordability on a long-term basis. G.L. Ch. 60 §1.
- It must be made with a person or entity that (1) has acquired or intends to acquire the site in order to develop it as affordable housing and (2) is not personally liable for any of the outstanding real estate taxes on the parcel.
- It must address the payment of outstanding real estate taxes only, and the accrued interest and collection costs on those taxes. It may not include any other municipal charges that are liens on the property. The agreement must specify at a minimum:
 - The amount owed
 - The amount to be abated subject to DOR approval
 - The balance to be paid
 - The monthly or other schedule for paying the balance
 - The final payment date
 - The rate of interest that will accrue, if any
 - The penalty for late payments, if any
 - The number of affordable housing units to be developed.

- It must (1) limit any abatement to no more than 75% of the outstanding real estate taxes and 100% of the outstanding interest and collection costs and (2) make any abatement subject to the approval of DOR.
- It must be (1) signed by the local official(s) designated in the implementation by-law or ordinance and the developer and (2) notarized and attested to by the city or town clerk.
 - A copy of the signed agreement must be provided to the (1) developer, (2) city council or board of selectmen, (3) Department of Housing and Community Development (DHCD) and (4) DOR.

D. Tax Abatements

1. DOR Approval

Abatements negotiated as part of an affordable housing tax agreement must be approved by DOR before they may be granted. *The standards and procedures that govern applications for DOR approval of affordable housing abatements will be set forth in separate guidelines.*

An application for approval of an affordable housing abatement must be acted on by DOR within 30 days of its receipt. If not, the application is deemed approved.

2. Abatement Procedure

Affordable housing abatements should be processed in the same manner and using the same forms as other abatements of real estate taxes. The assessors' records should reflect that the abatements are authorized by G.L. Ch. 58 §8C, however.

Abated taxes are charged to the overlay for the fiscal year to which the taxes relate. Accrued interest and collection costs that are waived under the agreement are simply unrealized revenue.

3. Unabated Taxes

The obligation and lien for unabated taxes remains, subject to the repayment and interest provisions contained in the agreement.

E. Statute Revocation

The municipality may revoke its acceptance, but it must wait at least three years after the acceptance is effective to do so. Revocation is also by majority vote of town meeting or town/city council subject to applicable charter provisions. G.L. Ch. 4 §4B.

II. DEED IN LIEU OF FORECLOSURE

Communities may accept title from the owners of properties on which there are municipal liens as an alternative to tax taking and foreclosure proceedings. Properties accepted under this option are then treated as if a tax title foreclosure has been completed.

A. Title Acceptance

1. Required Vote

Acceptance of title to the parcel is by majority vote of the municipal legislative body, *i.e.*, town meeting or town/city council. The vote should specifically state that the acceptance is under G.L. Ch. 60 §77C.

2. Eligible Property

a. Lien Types

Liens for outstanding real estate taxes or other municipal liens must exist on the parcel at the time title is accepted, but the parcel does not have to be in tax title.

Title to the parcel may be accepted, however, subject only to municipal liens. This means that all other liens or encumbrances, such as mortgages, mechanics or other liens, will ordinarily have to be cleared before the municipality may accept the deed. Alternatively, the deed may be accepted if all mortgagees, lien holders and others with interests in the parcel convey their interests to the municipality.

To protect the municipality, all parties with interests in the parcel will have to be identified and therefore, a title examination may be required. Municipal counsel should be consulted regarding any proposed transaction.

b. Acceptance Policy

Municipalities should adopt policies regarding the circumstances under which they will accept title to a parcel.

Acceptance should generally be limited to parcels with a current fair cash value of at least the amount owed unless a parcel is being acquired for a public use or enforcement of personal liability against the assessed owner is unlikely or impossible. The assessed owner of a parcel that is worth less than the amount outstanding will otherwise realize a windfall since acceptance discharges the owner from personal liability and the municipality cannot recover any deficiency as would be the case after an ordinary tax title foreclosure. See Section II-A-4-b below.

3. Joint Grantors

All persons or entities with interests in the property must act jointly as grantors to the municipality under the deed.

4. "Foreclosure" Procedure

Procedures should be established to immediately record the deed and promptly notify the assessors, collector, treasurer and accounting officer so that the "foreclosure by deed" process may be completed. Departments that bill for services, such as water or sewer, should also be notified of the change in ownership.

a. Tax Roll Removal

Assessors are to remove the parcel from the tax roll beginning in the fiscal year after the title is transferred to the municipality.

b. Amount Outstanding

All municipal taxes and charges outstanding as of the date the deed is recorded are deemed paid in full at that time. This includes the full amount of taxes assessed for the current fiscal year, as well as all accrued interest and collection costs, owed as of that date.

c. Subsequent Taxes

Any taxes inadvertently assessed for the fiscal year, or any municipal charges billed, after the title is transferred to the municipality should be certified by the collector or billing department to the treasurer and accounting officer and transferred to the tax possession account pending a final disposition of the property.

B. Parcel Disposition

1. Disposition Procedures

The property may be converted to municipal use or transferred for private use. Any transfer to a third party is governed by the same requirements that apply to the disposition of parcels acquired by tax title foreclosure in land court. The property may be sold (1) at a public auction by the tax possession custodian appointed by the selectmen or mayor, or (2) under any other procedure authorized by law for the disposition of municipal property. G.L. Ch. 60 §77B. If not auctioned by the tax possession custodian, the disposition must comply with the Uniform Procurement Act if the parcel being sold is worth more than \$25,000. G.L. Ch. 30B §16.

2. Reacquisition Prohibition

Grantors are permanently barred from reacquiring any interest in the parcel from the municipality.

III. EXPEDITED LAND COURT FORECLOSURE

Treasurers may expedite foreclosure proceedings in land court for tax title parcels worth less than the amount owed in real estate taxes or other municipal charges.

A. Treasurer's Affidavit

If the amount needed to redeem a parcel taken into tax title is more than the assessed valuation of the parcel, the treasurer may record an affidavit certifying that fact, G.L. Ch. 60 §81B, and then immediately file a foreclosure petition in land court. G.L. Ch. 60 §65. The treasurer does not have to wait the usual six months before petitioning for foreclosure.

The affidavit should be made using State Tax Form 60.81B, *Certification of Assessed Valuation and Redemption Amount* (Attached).

B. Foreclosure Decree

Once a foreclosure decree is entered, any party with an interest in the parcel who seeks to vacate the decree will have only 90 days to file the petition to vacate with land court, not the usual one year. G.L. Ch. 60 §69A.

C. Post-Foreclosure Procedure

The parcel is treated as any other tax possession acquired by a foreclosure decree entered by land court.

IV. LAND OF LOW VALUE FORECLOSURE

The maximum valuation of parcels qualifying for the land of low value foreclosure procedure as an alternative to seeking a foreclosure decree from land court has been increased and indexed to annual increases in consumer prices.

A. Maximum Valuation

Treasurers may use the land of low value foreclosure procedure for parcels worth up to \$15,000. G.L. Ch. 60 §79.

B. Annual Increase

The maximum valuation will be adjusted annually as of January 1 by the percentage increase in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for Urban Consumers (CPI-U) for the previous calendar year. The calendar year CPI-U increase is usually published in mid-February and DOR will notify treasurers of the applicable increase after it becomes available.

(City/Town)

NOTIFICATION OF ACCEPTANCE

General Laws Chapter 58 §8C (Affordable Housing Tax Abatement Agreements)

The Commissioner of Revenue is hereby notified that the City/Town of _____, by action of its legislative body on _____, _____, has accepted General Laws Chapter 58 §8C, which authorizes agreements for the payment and abatement of outstanding property taxes on sites to be developed as affordable housing.

(City/Town Clerk)

(Date)

PLEASE ATTACH A CERTIFIED COPY OF THE VOTE AND SUBMIT TO:

Property Tax Bureau
Division of Local Services
P.O. Box 9490
Boston MA 02205-9490

Name of City or Town

Office of the Treasurer

Certification of Assessed Valuation and Redemption Amount
General Laws Chapter 60 §81B

I, _____, hereby certify under General Laws Chapter 60 §81B that the assessed valuation of the parcel described below is less than the amount required to redeem the parcel from a tax title held by City/Town of _____ under an instrument of taking dated _____, _____ and recorded/registered with _____ Registry of Deeds, Book _____, Page _____/Document No. _____, Certificate No. _____.

DESCRIPTION OF PROPERTY

(The description must be sufficiently accurate to identify the property. In the case of registered land, the certificate of title number and the registry volume and page must be given.)

The assessed valuation as of January 1, _____ for fiscal year _____ is \$_____.

The amount required to redeem the tax title as of this date is \$_____.

Signed under the pains and penalties of perjury this _____ day of _____, _____.

Treasurer
City/Town of _____

The Commonwealth of Massachusetts

_____ ss. _____

Then personally appeared the above named _____, Treasurer for the City/Town of _____, and stated that the foregoing statements are true, before me.

Justice of the Peace/Notary Public

My commission expires _____